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9 Attorneys for Plaintiff and Real Party-in-Interest,
 10 DAVID M. GOODRICH in his capacity as
 11 Chapter 7 Trustee of the Bankruptcy Estate of
 12 Debra McDaniel

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEBRA MCDANIEL, individual,

Plaintiff,

vs.

NCO FINANCIAL SYSTEMS,
 INC., and DOES 1 – 10, inclusive,
 and each of them,

Defendants.

Case No.: 2:14-CV-02991-CBM-JEM

**NOTICE OF SUBSTITUTION OF
 BANKRUPTCY TRUSTEE AS
 PLAINTIFF AND REAL PARTY-
 IN-INTEREST; DECLARATION
 OF JESSICA ANVAR IN
 SUPPORT THEREOF**

Judge: Hon. Consuelo B. Marshall

[NO HEARING REQUIRED]

Case Filed: April 18, 2014

NOTICE IS HEREBY GIVEN that DAVID M. GOODRICH, the duly
 qualified and acting Chapter 7 Trustee of the BANKRUPTCY ESTATE OF DEBRA
 MCDANIEL (the “Bankruptcy Estate”) substitutes into this case as Plaintiff DEBRA
 MCDANIEL and the real party-in-interest with regard to all causes of action related

1 to this matter, which constitute property of the Bankruptcy Estate.

2 On December 16, 2013, Debra Suzanne McDaniel (the “Debtor”) filed a
3 petition under Chapter 7 of the Bankruptcy Code. David M. Goodrich (“Trustee”)
4 was thereafter appointed as Chapter 7 Trustee of the Debtor’s Bankruptcy Estate.
5 Discharge of the Debtor was entered on April 14, 2014 and the Debtor’s case was
6 closed on April 15, 2014. *See* Exhibit 1, attached hereto.
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9 The Complaint on file in this case seeks damages against Defendant, NCO
10 Financial Systems, Inc. based on alleged violations of the Telephone Consumer
11 Protection Act (“TCPA”), the Fair Debt Collection Practices Act (“FDCPA”) and the
12 Rosenthal Fair Debt Collections Practices Act (“RFDCPA”) that occurred at some
13 point before the bankruptcy petition was filed. Any right to recover any such
14 damages is exclusive of the Trustee.
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18 On the date of bankruptcy filing, all of a bankruptcy debtor’s legal and
19 equitable rights automatically become property of the bankruptcy estate. 11 U.S.C.
20 §541 (a)(1); and *See Smith v. Arthur Andersen LLP*, 421, F.3d 989, 1002 (9th Cir.
21 2005). What constitutes “legal and equitable rights” of a debtor is broadly defined
22 and includes anything of value belonging to the debtor at the time of filing. *See*
23 *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204-205 (1983); *In re Chappel*,
24 190 B.R. 489, 493 (9th Cir. BAP 1995); *In re Lee*, 179 B.R. 149, 156 (9th Cir. BAP
25 1995).
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1 Here, the claims alleged by the Debtor in the Complaint occurred in or around
2 April 2013, namely, prior to the date of the bankruptcy filing. Because these claims
3 relate to pre-petition events, they constitute property of the Bankruptcy Estate.
4 Hence, the Bankruptcy Estate is the holder of each of the claims alleged in the
5 Complaint. Further, the claims asserted in the Complaint remain property of the
6 Bankruptcy Estate because they were not abandoned by the Trustee. Only property
7 that has been scheduled under 11 U.S.C. §541 is automatically abandoned at the end
8 of the bankruptcy case. *See* 11 U.S.C. §554(d).
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12 A bankruptcy trustee is the exclusive party with standing to prosecute claims
13 held by a bankruptcy estate. *In re Spirtos*, 443 F.3d 1172, 1176 (9th Cir. 2006) [“We
14 therefore reaffirm our previous reasoning and that of our sister circuits and hold that
15 the bankruptcy code endows the bankruptcy trustee with the exclusive right to sue on
16 behalf of the estate”]. *See also, AP Industries, Inc. v. SN Phelps & Co. (In re AP*
17 *Industries, Inc.)*, 117 B.R. 789, 800 (Bankr.S.D.N.Y.1990) [“intercession of a
18 bankruptcy petition vests standing in a trustee or debtor-in-possession to prosecute
19 an action for recovery of a fraudulent conveyance ... ‘It is axiomatic that a duly
20 qualified trustee in bankruptcy represents the estate and is the only proper party to
21 maintain any action under Code §544(b) ... and that the creditors of the estate have
22 no right to proceed independently in their own names ...’ ”].
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27 A bankruptcy trustee is authorized to substitute into a pending action as the
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1 real party-in-interest without the need for prior court approval.

2 “With or without court approval, the trustee or debtor in
3 possession may prosecute or may enter an appearance and
4 defend any pending action or proceeding by or against the
5 debtor, or commence and prosecute any action or proceeding
6 in behalf of the estate before any tribunal.”

7 Rule 609 of the *Federal Rules of Bankruptcy Procedure*. See also, *Bowles v.*
8 *Pacific Commissary Co.* (1962) 199 Cal.App.2d 438, 18 Cal.Rptr. 838 [bankruptcy
9 trustee may intervene or be substituted in any pending litigation concerning the
10 debtor].

11 NOTICE IS FURTHER GIVEN that all future papers, notices and pleadings
12 filed in this case be served on the Trustee in care of the Bankruptcy Estate’s
13 counsel at the following address:

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15 Brett Shainfeld
16 *brett@shainfeld-anvar.com*
17 Jessica Anvar
18 *jessica@shainfeld-anvar.com*
19 12304 Santa Monica Blvd, Suite 221

20 Dated: July 10, 2014

SHAINFELD & ANVAR, PC

21 By: _____

22 Jessica Anvar
23 Attorneys for Plaintiff and Real Party-In-
24 Interest, David M. Goodrich in his capacity
25 as Chapter 7 Trustee of the Bankruptcy
26 Estate of Debra McDaniel
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DECLARATION OF JESSICA ANVAR

I, Jessica Anvar, declare as follows:

1. I am a member of the State Bar of California and the bar of this Court. I am a partner with Shainfeld & Anvar, PC, attorneys of record for Plaintiff and Real Party-In-Interest, David M. Goodrich in his capacity as Chapter 7 Trustee of the Bankruptcy Estate of Debra McDaniel in this action. I make this declaration of my own personal knowledge, and if called to testify, I could and would competently testify hereto under oath.

2. I make this declaration in support of the attached *Notice of Substitution of Bankruptcy Trustee as Plaintiff and Real Party-in-Interest; Declaration of Jessica Anvar in Support Thereof*.

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CERTIFICATE OF SERVICE

I am a citizen of the United States and employed in Los Angeles County, California. I am over eighteen years and not a party to the within-entitled action. My business address is Shainfeld & Anvar, PC, 12304 Santa Monica Boulevard, Suite 221, Los Angeles, California 90025.

The foregoing document was served via ECF on all parties and their attorneys of record in *Debra McDaniel, individual v. NCO Financial Systems, Inc., and DOES 1 - 10, inclusive, and each of them, Case No. 2:14-CV-02991-CBM-JEM*, via ECF.

I declare under penalty of perjury that the foregoing is true and correct.
Executed at Los Angeles, California.

Dated: July 10, 2014

/s/ Glenda Flores
Glenda Flores

EXHIBIT

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IFP, REOPENED

**U.S. Bankruptcy Court
Central District Of California (Los Angeles)
Bankruptcy Petition #: 2:13-bk-39396-ER**

Assigned to: Ernest M. Robles
Chapter 7
Voluntary
No asset

Date filed: 12/16/2013
Date reopened: 06/16/2014
Debtor discharged: 04/14/2014
341 meeting: 01/30/2014
Deadline for objecting to discharge: 03/31/2014
Deadline for financial mgmt. course: 03/31/2014

Debtor disposition: Standard Discharge

Debtor

Debra Suzanne McDaniel
2648 E Workman Ave #173
West Covina, CA 91791
LOS ANGELES-CA
310-733-0252
SSN / ITIN: xxx-xx-1968
aka Debbye McDaniel
aka Debbie McDaniel

represented by **Debra Suzanne McDaniel**
PRO SE

Trustee

David M Goodrich (TR)
333 S. Hope St., 35th Floor
Los Angeles, CA 90071
(213) 626-2311

U.S. Trustee

United States Trustee (LA)
915 Wilshire Blvd, Suite 1850
Los Angeles, CA 90017
(213) 894-6811

Filing Date	#	Docket Text
04/12/2014	<u>29</u> (1 pg)	Personal Financial Management Course Certificate for Debtor (Geving, Allison) (Entered: 04/12/2014)
04/14/2014	<u>30</u> (2 pgs)	DISCHARGE OF DEBTORS (BNC) (Gomez, Andrea) (Entered: 04/14/2014)

04/15/2014	<u>31</u>	Bankruptcy Case Closed - DISCHARGE. Order of Discharge in the above referenced case was entered and notice was provided to parties in interest. Since it appears that no further matters are required that this case remain open, or that the jurisdiction of this Court continue, it is ordered that the Trustee is discharged, bond is exonerated, and the case is closed. (Auto Closed) (Gomez, Andrea) (Entered: 04/15/2014)
04/16/2014	<u>32</u> (4 pgs)	BNC Certificate of Notice (RE: related document(s) <u>30</u> DISCHARGE OF DEBTOR - Chapter 7 (CACB AutoDischarge) (BNC)) No. of Notices: 27. Notice Date 04/16/2014. (Admin.) (Entered: 04/16/2014)
06/04/2014		Receipt of Reopen Chapter 7 Filing Fee - \$260.00 by 01. Receipt Number 20182375. (admin) (Entered: 06/05/2014)
06/04/2014	<u>33</u> (9 pgs)	Motion to Reopen Chapter 7 Case . Fee Amount \$260 Filed by Debtor Debra Suzanne McDaniel (Evangelista, Maria) (Entered: 06/05/2014)
06/04/2014	<u>34</u> (1 pg)	Notice of Change of Address Filed by Debtor Debra Suzanne McDaniel . (Evangelista, Maria) (Entered: 06/05/2014)
06/04/2014	<u>35</u> (5 pgs)	Amended Schedule B, Amended Schedule C; Filed by Debtor Debra Suzanne McDaniel . (Evangelista, Maria) (Entered: 06/11/2014)
06/16/2014	<u>36</u> (2 pgs)	MEMORANDUM OF DECISION ON DEBTORS MOTION TO REOPEN CHAPTER 7 CASE (BNC-PDF) Signed on 6/16/2014. (Evangelista, Maria) (Entered: 06/16/2014)
06/16/2014	<u>37</u> (2 pgs)	ORDER GRANTING MOTION TO REOPEN AND DIRECTING THE UNITED STATES TRUSTEE TO APPOINT A CHAPTER 7 TRUSTEE; (1) The above-captioned bankruptcy case is reopened; and (2) The United States Trustee shall appoint a Chapter 7 Trustee; (Related Doc # <u>33</u>) Signed on 6/16/2014 (Evangelista, Maria) (Entered: 06/16/2014)
06/17/2014	<u>38</u> (1 pg)	Notice of appointment and acceptance of trustee <i>and fixing of bond; acceptance of appointment as interim trustee in a</i>

		<i>reopened case</i> Filed by Trustee David M Goodrich (TR). (Goodrich (TR), David) (Entered: 06/17/2014)
06/18/2014	<u>39</u> (3 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s) <u>36</u> Memorandum of decision (BNC-PDF)) No. of Notices: 1. Notice Date 06/18/2014. (Admin.) (Entered: 06/18/2014)
06/18/2014	<u>40</u> (3 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s) <u>37</u> Order Reopening Bankruptcy Case (BNC-PDF)) No. of Notices: 1. Notice Date 06/18/2014. (Admin.) (Entered: 06/18/2014)
06/25/2014	<u>41</u> (9 pgs)	Motion to Reconsider Order Reopening Chapter 7 Bankruptcy Case; Filed by Creditor NCO Financial Systems Inc (Evangelista, Maria) CORRECTION: Attorney to lodge order via LOU; Modified on 6/26/2014 (Evangelista, Maria). (Entered: 06/26/2014)
06/25/2014	<u>42</u> (16 pgs)	Request for Judicial Notice in Support of Motion to Reconsider; Filed by Creditor NCO Financial Systems Inc (RE: related document(s) <u>41</u> Motion to Reconsider). (Evangelista, Maria) (Entered: 06/26/2014)
06/26/2014	43	Notice to Filer of Error and/or Deficient Document Other - (RE: related document(s) <u>41</u> Motion to Reconsider filed by Creditor NCO Financial Systems Inc) CORRECTION: Attorney to lodge order via LOU; (Evangelista, Maria) (Entered: 06/26/2014)
07/02/2014	<u>44</u> (9 pgs)	Application to Employ Shainfeld & Anvar as Special Litigation Counsel ; <i>Declaration Of Jessica Anvar In Support Thereof</i> Filed by Trustee David M Goodrich (TR) (Goodrich (TR), David) (Entered: 07/02/2014)
07/02/2014	<u>45</u> (4 pgs)	Notice of motion/application <i>Of Chapter 7 Trustee's Application To Employ Shainfeld & Anvar As Special Litigation Counsel</i> Filed by Trustee David M Goodrich (TR) (RE: related document(s) <u>44</u> Application to Employ Shainfeld & Anvar as Special Litigation Counsel ; <i>Declaration Of Jessica Anvar In Support Thereof</i> Filed by Trustee David M Goodrich (TR) (Goodrich (TR), David)). (Goodrich (TR), David) (Entered: 07/02/2014)

07/02/2014	<u>46</u> (54 pgs)	Motion <i>Chapter 7 Trustee's Motion For Order Disallowing Claim Of Exemption In Lawsuit; Memorandum Of Points And Authorities; Declaration Of David M. Goodrich In Support Thereof</i> (August 6, 2014 at 11:00 a.m.) Filed by Trustee David M Goodrich (TR) (Goodrich (TR), David) (Entered: 07/02/2014)
07/02/2014	<u>47</u> (5 pgs)	Notice of Hearing <i>Re: Chapter 7 Trustee's Motion For Order Disallowing Claim Of Exemption In Lawsuit</i> (August 6, 2014 at 11:00 a.m.) Filed by Trustee David M Goodrich (TR) (RE: related document(s) <u>46</u> Motion <i>Chapter 7 Trustee's Motion For Order Disallowing Claim Of Exemption In Lawsuit; Memorandum Of Points And Authorities; Declaration Of David M. Goodrich In Support Thereof</i> (August 6, 2014 at 11:00 a.m.) Filed by Trustee David M Goodrich (TR) (Goodrich (TR), David)). (Goodrich (TR), David) (Entered: 07/02/2014)
07/03/2014	48	Hearing Set (RE: related document(s) <u>46</u> Generic Motion filed by Trustee David M Goodrich (TR)) The Hearing date is set for 8/6/2014 at 11:00 AM at Crtrm 1568, 255 E Temple St., Los Angeles, CA 90012. The case judge is Ernest M. Robles (Lomeli, Lydia R.) (Entered: 07/03/2014)
07/07/2014	<u>49</u> (1 pg)	Request for courtesy Notice of Electronic Filing (NEF) Filed by Richard, Damian. (Richard, Damian) (Entered: 07/07/2014)
07/07/2014	<u>50</u> (56 pgs)	Opposition to (related document(s): <u>41</u> Motion to Reconsider filed by Creditor NCO Financial Systems Inc) <i>Chapter 7 Trustee's Opposition To NCO Financial Systems Inc.'s Motion For Reconsideration; Memorandum Of Points And Authorities; Declaration Of David M. Goodrich In Support Thereof</i> Filed by Trustee David M Goodrich (TR) (Goodrich (TR), David) (Entered: 07/07/2014)

PACER Service Center
Transaction Receipt
07/10/2014 17:10:39